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Springfield Engine Stop Co. v. Sharp (1903) 184 Mass. 266, 68 N. E. 224. The law seems to be equally well settled that retention of the goods for a longer time transfers title to the prospective vendee and makes him absolutely liable for the price. *American Electric Tel. Co. v. Emporia Tel. Co.* (1910) 83 Kan. 64, 109 Pac. 780; *In re Downing Paper Co.* (C. C. A. 1905) 147 Fed. 858. The principal case must be distinguished from that of a "sale or return" where the expiration of the period for return fixes the liability of the vendee if he has not expressed his dissatisfaction by that time. *International Filter Co. v. Cox Bottling Co.* (1913) 89 Kan. 645, 132 Pac. 180; *Fiss, etc. Co. v. Schwartzchild* (1910) 121 N. Y. Supp. 292. The Sales Act is not in force in the jurisdiction of the principal case and its application is not involved. There seems no doubt, however, that where it is in force its provisions would cover the facts, as assumed by the court. Title would pass to the vendee, in the absence of an expression of approval, at the end of the time agreed upon for such expression, or at the end of a reasonable time, in the absence of such agreement. Uniform Sales Act § 19, N. Y. Per. Prop. Law § 100; see *Isaacs v. Macdonald* (1913) 214 Mass. 487, 102 N. E. 81; Williston, Sales § 272. The fact that the defendant never signed the formal contract would not affect his liability under the original agreement, since an agreement to sign a contract whose terms are settled is binding on the parties, whether the formal contract is signed or not. *New York, etc. Co. v. Meyersdale Coal Co.* (C. C. A. 1914) 217 Fed. 747; *Berman v. Rosenberg* (Me. 1916) 97 Atl. 6. But there is force in the dissenting opinion in the principal case, where it is insisted that the original agreement, even if binding, was to sign one of three formal contracts. In this view of the facts it is clear that the Sales Act could have no application, and that any recovery by the plaintiff would be limited to the actual damages suffered from the breach of the original agreement. *Isaacs v. Macdonald, supra*. On this point the principal case can be supported only on the assumption set forth in the majority opinion, that the agreement was to sign one definite contract for a fixed price.

SURETYSHIP—DISCHARGE OF SURETY—RELEASE OF ATTACHMENT.—The defendant was indorser of a promissory note of which the plaintiff had become holder. The plaintiff had commenced a suit against the maker and attached the property of the latter, but had subsequently discontinued the suit and released the attachment. *Held*, that the release of the attachment did not discharge the surety. *Howard Nat'l. Bank v. Arbuckle* (Vt. 1917) 102 Atl. 476.

As a general rule, a surety is not released by the mere inaction of the creditor, Stearns, Suretyship § 95, unless the inaction constitutes gross negligence, such as the failure to record a chattel mortgage, in which event the surety is discharged to the extent of the loss caused him. *Hendryx v. Evans* (1903) 120 Iowa 310, 94, N. W. 853; see *Nunn v. Smith* (Tex. Civ. App. 1917) 194 S. W. 406; *contra, Philbrooks v. McEwen* (1868) 29 Ind. 347. Usually, however, any act on the part of the creditor which tends to injure the surety releases the latter, *City of Maquoketa v. Willey* (1872) 35 Iowa 323, and, in accordance with this rule, a release of an execution lien upon the property of the principal discharges the surety. *Winston v. Yeargin* (1873) 50 Ala. 340; *Williams v. Brown* (1912) 70 W. Va. 472, 74 S. E. 409. When, however, the creditor before judgment merely attaches the property of the principal debtor and subsequently releases the attachment, some

courts have refused to consider the surety as discharged, basing their decision either on the ground that, since the creditor was not bound to begin the action, he was not bound to preserve the attachment, *Collier v. Vivian* (1846) 8 Ala. 903, or that the preservation of the attachment required active diligence and continual expense. *Morrison v. Bank* (1889) 65 N. H. 253, 20 Atl. 300. The former theory seems inconsistent with the decisions in cases where the creditor has proceeded to execution, and the latter theory seems contrary to the general rule forbidding any positive act on the part of the creditor detrimental to the surety. It would seem, therefore, that in cases such as the instant case, the willful act of the creditor should have the effect of releasing the surety. *Spring v. George* (1888) 50 Hun 227, 3 N. Y. Supp. 43; *Bank of Missouri v. Matson* (1857) 24 Mo. 333; *City of Maquoketa v. Willey*, *supra*.

SURETYSHIP—SUBROGATION—SURETY ON APPEAL BOND.—The defendant was surety for H on a guardian's bond. A judgment was given rendered against H in a suit by C for misappropriated funds. H appealed, giving the plaintiff as surety on the appeal bond. Judgment was affirmed and the plaintiff was obliged to pay it. He now sues the defendant in C's name for the amount of the judgment, claiming to be subrogated to all of C's rights. *Held*, he was primarily liable as between himself and the defendant and hence could not recover. *National Surety Co. v. White* (Ga. 1917) 94 S. E. 589.

Where several sureties are liable for the same debt they are entitled as between themselves to contribution upon the equitable principle that, since all are equally obligated, each should bear his proportionate share of the loss which the default of the debtor has cast upon them. Brandt, *Suretyship and Guaranty* (3rd ed.) § 279. Since the application of this equitable principle depends upon the sureties standing in a similar position to the creditor in regard to the debt of the principal, see *Schram v. Werner* (1895) 85 Hun 293, 32 N. Y. Supp. 995, it follows that a surety may by agreement so alter his rights as against the other sureties as to make himself liable secondarily, *Bulkely v. House* (1893) 62 Conn. 459, 26 Atl. 352; *Schram v. Werner*, *supra*, or primarily, Rowlatt, *Principal and Surety* 220; see *Glenn v. Wallace* (S. C. 1850) 4 Strob. Eq. 149, as between himself and a prior surety. The case of a subsequent surety in a judicial proceeding is an illustration of this. A surety on a stay of execution, bail, or appeal bond substitutes his own obligation for that of the person or property of the principal debtor which might otherwise have been taken to satisfy the debt. It would seem to be a fair inference that by so doing he agrees to become as between himself and a prior surety primarily liable for the debt. See *Wright v. Morley* (1805) 11 Ves. Jr. 12, 22, commenting on *Parsons v. Briddock* (1708) 2 Vern. 608. The courts have generally held that a subsequent surety on a stay of execution bond, *Anderson v. Hendrickson* (Neb. 1901) 95 N. W. 844, on a bail bond, *Smith v. Bing* (1827) 3 Ohio 33, or on an appeal bond, *Fidelity & Deposit Co. v. Bowen* (1904) 123 Iowa 356, 98 N. W. 897; but *cf.* *Howe v. Frazer* (La. 1842) 2 Rob. 424, is primarily liable, and cannot claim contribution or indemnification from a prior surety. Conversely, if the prior surety is called upon to pay, he will be subrogated to the creditor's rights against the subsequent surety on a stay of execution bond, *Schnitzel's Appeal* (1865) 49 Pa. 23; but *cf.* *Holmes v. Day* (1871) 108 Mass 563, on a bail bond, *Parsons v. Briddock*, *supra*, or